

AMENDED IN ASSEMBLY JULY 2, 1998

AMENDED IN SENATE MAY 12, 1998

AMENDED IN SENATE APRIL 27, 1998

AMENDED IN SENATE MARCH 2, 1998

**SENATE BILL**

**No. 1441**

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**Introduced by Senator Kopp**

January 28, 1998

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An act to amend Section 987.9 of, *and* to amend and renumber Section 969<sup>1/2</sup> of, ~~and to repeal Section 1158 of,~~ the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 1441, as amended, Kopp. Criminal procedure: indigent defendants: capital cases.

(1) Under existing law, a complaint, to which a plea of guilty has been made to a felony not punishable by death and which does not charge all prior felonies of which the defendant has been convicted, may be amended to charge the prior conviction or convictions. Following authorization, the amendments are required to be made upon order of the court. Existing law also requires that the defendant be arraigned before the court to which the complaint has been certified, and if the defendant answers that he or she has not suffered the prior conviction, the court is required to try the question of whether or not the defendant has suffered the prior conviction.

This bill instead would require, with a specified exception, that the question of whether or not a defendant has suffered the prior conviction be tried by a jury impaneled for that purpose, or by the court if a jury is waived. The bill also would require that the question of whether the defendant is the person who has suffered the prior conviction be tried by the court without a jury. ~~However, this provision would not apply to prior convictions alleged in order to determine the existence of special circumstances in a murder conviction nor to prior convictions alleged as an element of a charged prior offense.~~

(2) Existing law provides that in the trial of a capital case an indigent defendant, through the defendant's counsel, may request the court for funds for the specific payment of investigators, experts, and others for the preparation or presentation of the defense. Existing law also requires confidentiality regarding the fact that an application has been made and as to the contents of the application.

This bill would require that this confidentiality not preclude any court from providing the Attorney General with access to statutorily protected documents when the defendant raises an issue on appeal or collateral review where the recorded portion of the record relates to the issue raised. The bill also would require that, when the defendant raises the issue, the funding records be provided to the Attorney General at the Attorney General's request and that the documents provided to the Attorney General remain under seal with their use limited solely to the pending proceeding.

~~(3) Under existing law, whenever the fact of a previous conviction of another offense is charged in an accusatory pleading, and the defendant is found guilty of the offense with which he or she is charged, the jury, or the judge if a jury trial is waived, is required to find whether or not the defendant has suffered the previous conviction, unless the answer of the defendant admits the previous conviction.~~

~~This bill would repeal this provision and make a conforming change.~~

The bill also would make a number of nonsubstantive, technical changes.



Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 969<sup>1/2</sup> of the Penal Code is  
2 amended and renumbered to read:

3 969.5. (a) Whenever it shall be discovered that a  
4 pending complaint to which a plea of guilty has been  
5 made under Section 859a does not charge all prior  
6 felonies of which the defendant has been convicted either  
7 in this state or elsewhere, the complaint may be forthwith  
8 amended to charge the prior conviction or convictions  
9 and the amendments may and shall be made upon order  
10 of the court. The defendant shall thereupon be arraigned  
11 before the court to which the complaint has been  
12 certified and shall be asked whether he or she has suffered  
13 the prior conviction. If the defendant enters a denial, his  
14 or her answer shall be entered in the minutes of the court.  
15 The refusal of the defendant to answer is equivalent to a  
16 denial that he or she has suffered the prior conviction.

17 (b) Except as provided in subdivision (c), the question  
18 of whether or not the defendant has suffered the prior  
19 conviction shall be tried by a jury impaneled for that  
20 purpose unless a jury is waived, in which case it may be  
21 tried by the court.

22 (c) Notwithstanding the provisions of subdivision (b),  
23 the question of whether the defendant is the person who  
24 has suffered the prior conviction shall be tried by the  
25 court without a jury.

26 ~~(d) Subdivision (c) shall not apply to prior convictions~~  
27 ~~alleged pursuant to Section 190.2 or to prior convictions~~  
28 ~~alleged as an element of a charged offense.~~

29 SEC. 2. Section 987.9 of the Penal Code is amended to  
30 read:

31 987.9. (a) In the trial of a capital case or a case under  
32 subdivision (a) of Section 190.05 the indigent defendant,  
33 through the defendant's counsel, may request the court  
34 for funds for the specific payment of investigators,  
35 experts, and others for the preparation or presentation of

1 the defense. The application for funds shall be by affidavit  
2 and shall specify that the funds are reasonably necessary  
3 for the preparation or presentation of the defense. The  
4 fact that an application has been made shall be  
5 confidential and the contents of the application shall be  
6 confidential. Upon receipt of an application, a judge of  
7 the court, other than the trial judge presiding over the  
8 case in question, shall rule on the reasonableness of the  
9 request and shall disburse an appropriate amount of  
10 money to the defendant's attorney. The ruling on the  
11 reasonableness of the request shall be made at an in  
12 camera hearing. In making the ruling, the court shall be  
13 guided by the need to provide a complete and full  
14 defense for the defendant.

15 (b) The Controller shall not reimburse any county for  
16 costs that exceed Board of Control standards for travel  
17 and per diem expenses. The Controller may reimburse  
18 extraordinary costs in unusual cases if the county provides  
19 sufficient documentation of the need for those  
20 expenditures.

21 At the termination of the proceedings, the attorney  
22 shall furnish to the court a complete accounting of all  
23 moneys received and disbursed pursuant to this section.

24 (c) The Controller shall adopt regulations pursuant to  
25 Chapter 3.5 (commencing with Section 11340) of Part 1  
26 of Division 3 of Title 2 of the Government Code,  
27 controlling reimbursements under this section. The  
28 regulations shall consider compensation for investigators,  
29 expert witnesses, and other expenses that may or may not  
30 be reimbursable pursuant to this section.  
31 Notwithstanding the provisions of Chapter 3.5  
32 (commencing with Section 11340) of Part 1 of Division 3  
33 of Title 2 of the Government Code, the Controller shall  
34 follow any regulations adopted until final approval by the  
35 Office of Administrative Law.

36 (d) The confidentiality provided in this section shall  
37 not preclude any court from providing the Attorney  
38 General with access to documents protected by this  
39 section when the defendant raises an issue on appeal or  
40 collateral review where the recorded portion of the



1 record, created pursuant to this section, relates to the  
2 issue raised. When the defendant raises that issue, the  
3 funding records, or relevant portions thereof, shall be  
4 provided to the Attorney General at the Attorney  
5 General's request. In such a case, the documents shall  
6 remain under seal and their use shall be limited solely to  
7 the pending proceeding.

8 ~~SEC. 3.—Section 1158 of the Penal Code is repealed.~~

